

FINANCIAL GUARANTEE PROCESS FOR PLAN- AND NOTICE-LEVEL OPERATIONS UNDER 43 CFR 3809 SURFACE MANAGEMENT REGULATIONS

Pursuant to §3809.551, the operator/claimant must provide a financial guarantee acceptable to the BLM before operations can begin under a Mining Plan and §3809.503(c) and §3809.554(b), under a new notice. The financial guarantee must cover the estimated reclamation cost as if the BLM were to contract with a licensed and bonded third party to reclaim disturbances resulting from the operations or pre-existing disturbances for which the claimant/operator has taken responsibility, pursuant to §3809.552(a) and §3809.554(a). Acceptable financial guarantee instruments may be found at §3809.555.

a. Financial Guarantee Process

To fulfill the 43 CFR 3809 Surface Management financial guarantee requirements, the following process must be followed.

(1) The BLM district office determines that the Plan or Notice is complete.

(2) The Plan or Notice must be accompanied by the operator's reclamation cost estimate. The Notice will not be considered "acceptable" by the BLM without submission of an acceptable reclamation cost estimate by the operator (see Davis-Bacon and Administrative Charges below).

Davis-Bacon Wages

Davis-Bacon wages must be used in the reclamation cost estimate for all amounts over \$2,000.

Administrative Charges

The following administrative charges must be added to the reclamation cost estimate and included in the financial guarantee:

| | |
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| Contract Administration Cost (Operational Project costs) | 12.0% |
| BLM Indirect Cost Variable | 17.1% |

The Administrative Charges are applied to the total reclamation estimate.

For reclamation cost estimates of less than \$1,000 the bond will be rounded up to the nearest \$10; for reclamation cost estimates over \$1,000 the bond will be rounded up to the nearest \$100.

A portion of an existing financial guarantee for reclamation earthwork that has been completed may be applied to proposed earthwork in another location. For example, if a trench has been bonded, excavated, and backfilled the dollar amount associated with the earthwork portion of the

bond can be applied to a second phase of trench excavation¹ which has been identified under the same Notice.

(3) The BLM reviews the reclamation cost estimate and determines if it is acceptable. If it is determined to be acceptable, the BLM sends the operator a decision letter accepting the estimate.

(4) Financial guarantees, acceptable to the BLM, can be made in two forms: Surety Bonds or Personal bonds in the form of Cash Bonds, Letters of Credit, or Certificates of Deposit. Whichever financial guarantee is filed, it must be acceptable to the BLM, cover all reclamation and administrative costs, and be payable to the Department of the Interior-BLM, on demand, in case of default.

Financial guarantee forms for surety and personal bonds are available from field offices and the completed forms must accompany the submittal of the financial instrument. It is recommended that the financial instrument and accompanying form be sent certified mail-return receipt requested. The financial instrument and accompanying form must be sent to the BLM office responsible for adjudication of the financial guarantee indicating: **Attention: Bond Adjudicator**. If the financial instrument is through a financial institution, the BLM must receive a letter and/or form from the institution on its official letterhead, establishing the Secretary of the Interior, Bureau of Land Management, as the beneficiary.

(5) The BLM will determine if the financial instrument is acceptable.

(6) The BLM will issue a decision letter accepting the financial guarantee. Operations may not commence until the BLM Plan or Notice and the reclamation bond acceptance letter is received by the operator.

The BLM will periodically review the estimated cost of reclamation and the adequacy of any funding mechanism and require increased coverage, if necessary.

When the BLM identifies a need for it, the operator must establish a trust fund or other funding mechanism available to the BLM to ensure the continuation of long-term treatment to achieve water quality standards and for other long-term, post-mining maintenance requirements. The funding must be adequate to provide for construction, long-term operation, maintenance, or replacement of any treatment facilities and infrastructure for as long as the treatment and facilities are needed after mine closure. The BLM may identify the need for a trust fund or other funding mechanism during plan review or later.

b. Forfeiture

Under § 3809.595, the BLM may initiate forfeiture of all or part of a financial guarantee for any project area or portion of a project area if:

¹ IM No. 2006-135, Reclamation Cost Estimates for Notices and Plans of Operations.

(1) the operator or mining claimant refuses or is unable to conduct reclamation as provided in the reclamation measures incorporated into the notice or approved plan of operations or the regulations in this subpart;

(2) the operator or mining claimant fails to meet the terms of the notice or approved plan of operations; or

(3) the operator or mining claimant defaults on any of the conditions under which financial guarantee was obtained.

If the amount forfeited is insufficient to pay for the full cost of reclamation, the operators and mining claimants are liable for the remaining costs as set forth in §3809.116. The BLM may complete or authorize completion of reclamation of the area covered by the financial guarantee and may recover from responsible persons all costs of reclamation in excess of the amount forfeited.

c. Release of Financial Guarantees

Requests for release of existing financial guarantees must be provided to the BLM in writing before the BLM contacts the financial institution. These requests must include the Notice "OR," serial number, name/s/ of all claimants and operators, mailing addresses, phone numbers, and the amount requested for release. The BLM must verify satisfactory completion of site reclamation prior to authorizing the release of the financial guarantee.

d. Frequency of Inspections

The BLM may inspect mining operations at any time with no advance notice. Inspections may include all structures, equipment, workings, and uses located on the public lands. The inspection may also include verification that operations comply with this subpart (§3809.600). Under §3715.7, the BLM field staff is authorized to physically inspect all structures, equipment, workings, and uses located on the public lands. The inspection may include verification of the nature of use and occupancy to ensure that use or occupancy is, or continues to be, reasonably incident and in compliance with §3715.2, 3715.2–1, 3715.4–1 and 3715.5.

The BLM will not inspect the inside of structures **used solely** for residential purposes, unless an occupant or a court of competent jurisdiction gives permission.

Forms Link

[BLM Forms on Forms Central Website](#)